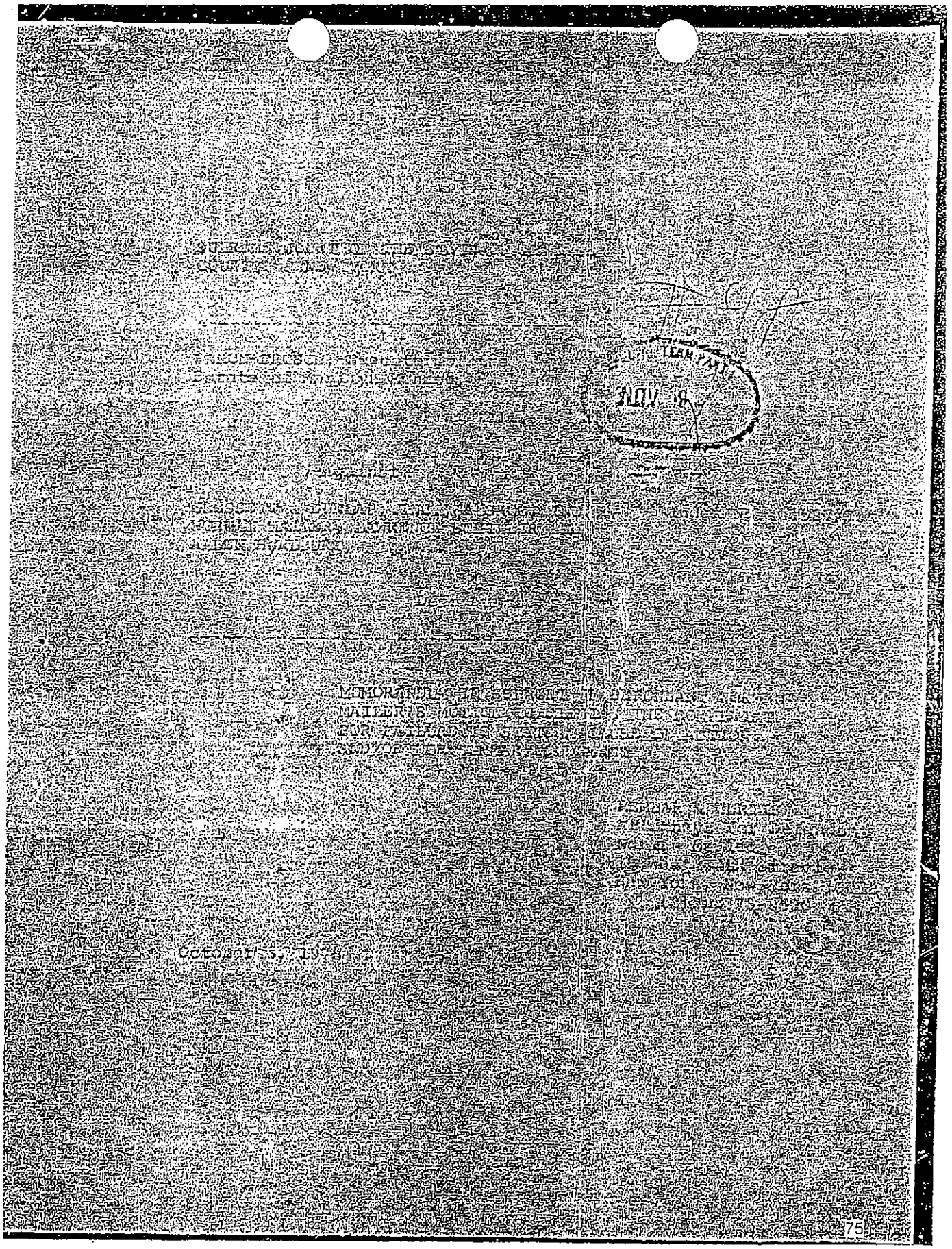
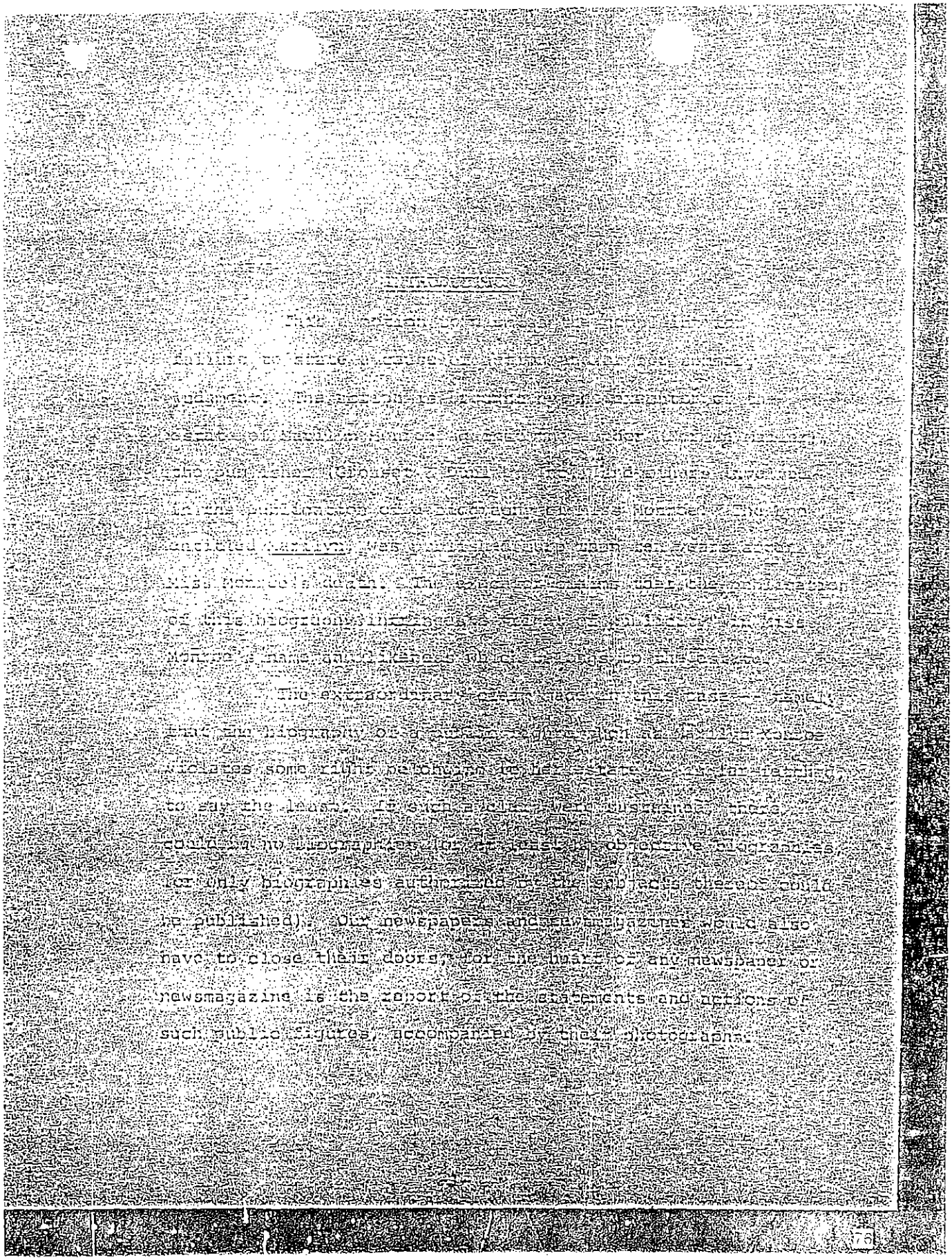
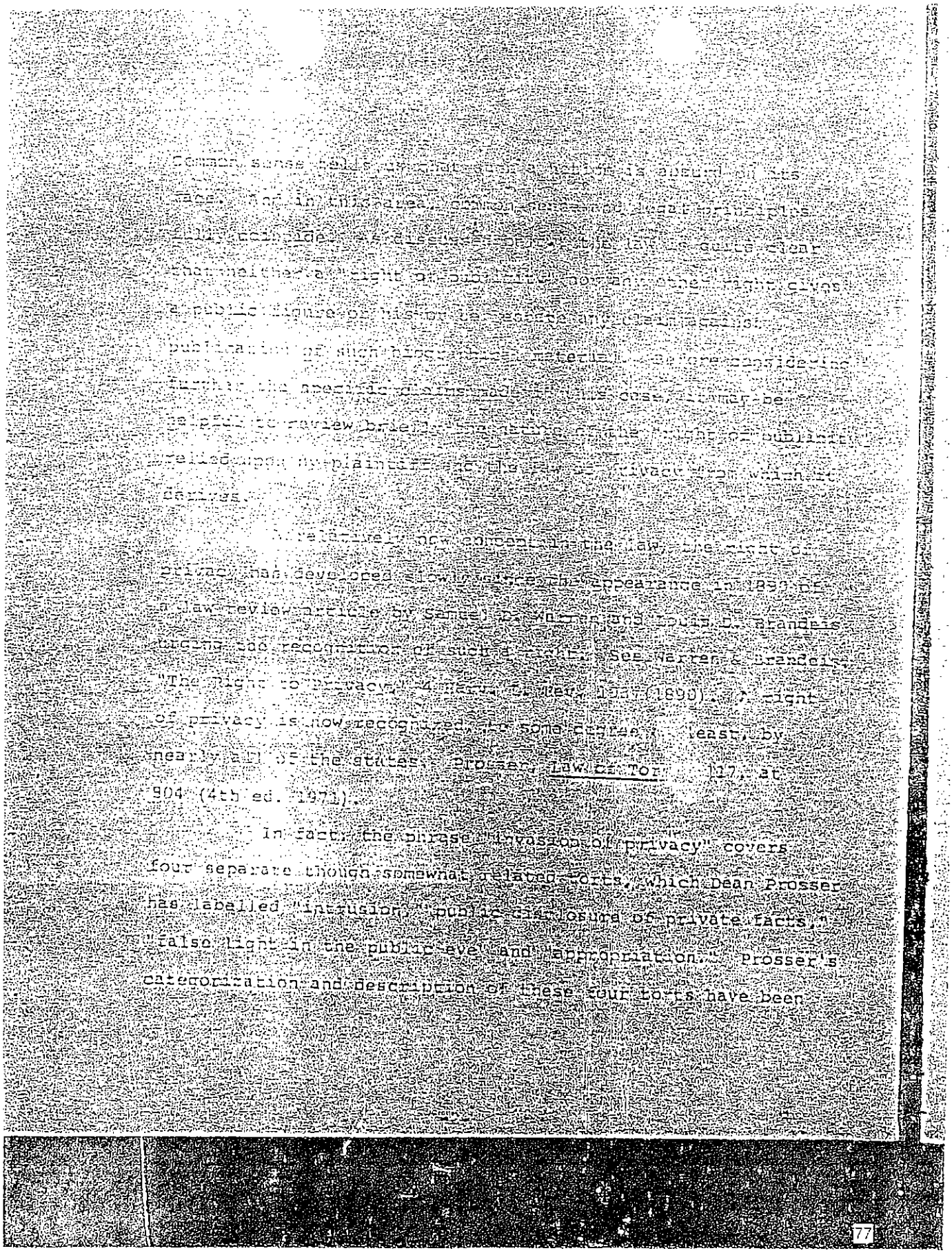
Exhibit 4







Common sense tells us that [illegible] absurd on its face. And in this area, [illegible] clear that neither the right of publicity nor any other right gives a public figure or his estate an absolute right to prevent publication of such [illegible] material. Before considering further the specific claims [illegible] case, it may be helpful to review briefly [illegible] relied upon by plaintiff and the [illegible] privacy from which it derives.

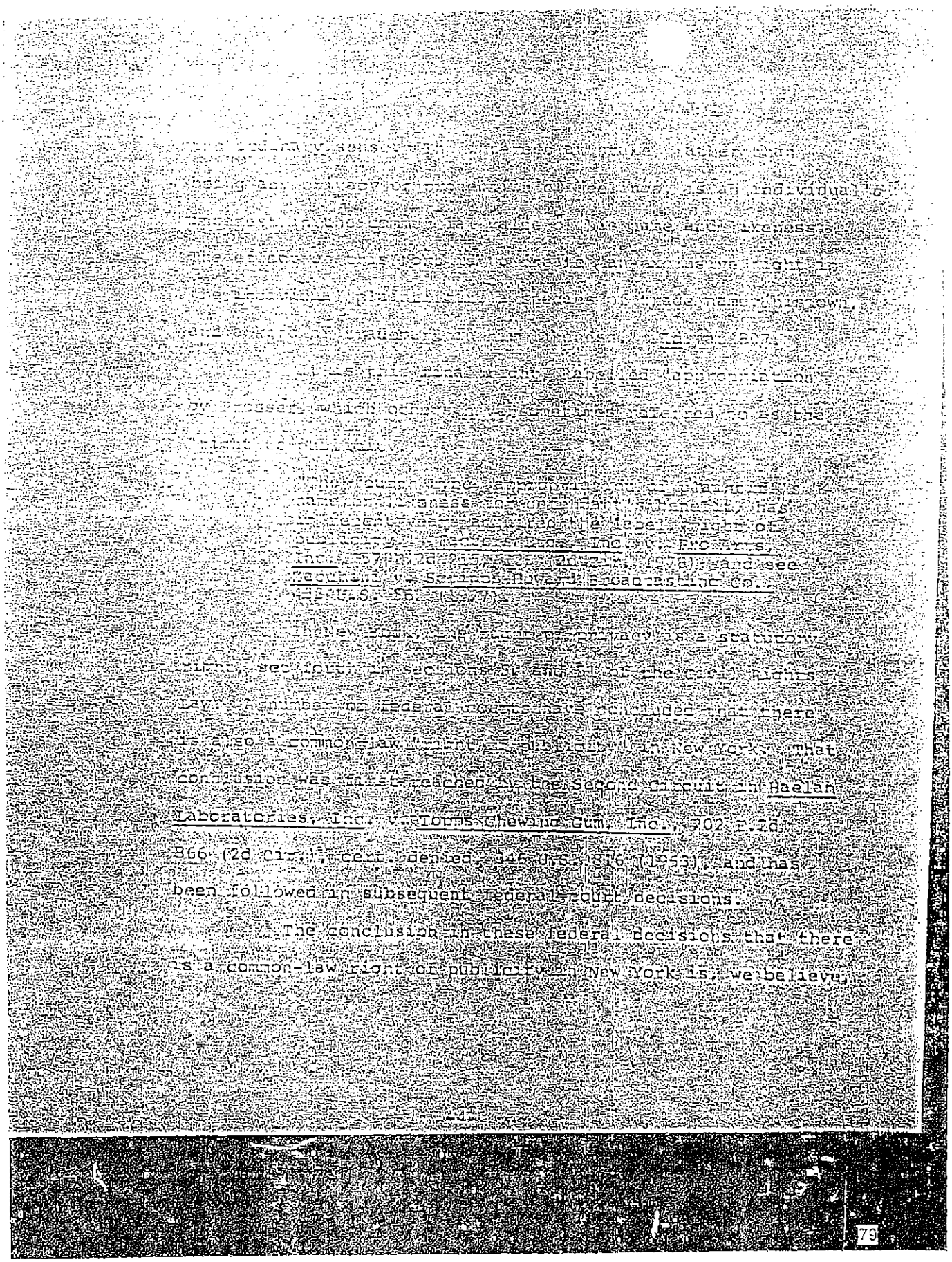
Relatively new [illegible] law, the right of privacy has developed slowly since the appearance in 1890 of a law review article by Samuel D. Warren and Louis D. Brandeis urging such recognition of such a right. See Warren & Brandeis, "The Right to Privacy", 4 Harv. L. Rev. 193 (1890). A right of privacy is now recognized in some [illegible] at least, by nearly all of the states. Prosser, Law of Torts 117, at 804 (4th ed. 1971).

In fact, the phrase "invasion of privacy" covers four separate though somewhat related torts, which Dean Prosser has labelled "intrusion," "public disclosure of private facts," "false light in the public eye" and "appropriation." Prosser's categorization and description of these four torts have been

[redacted]

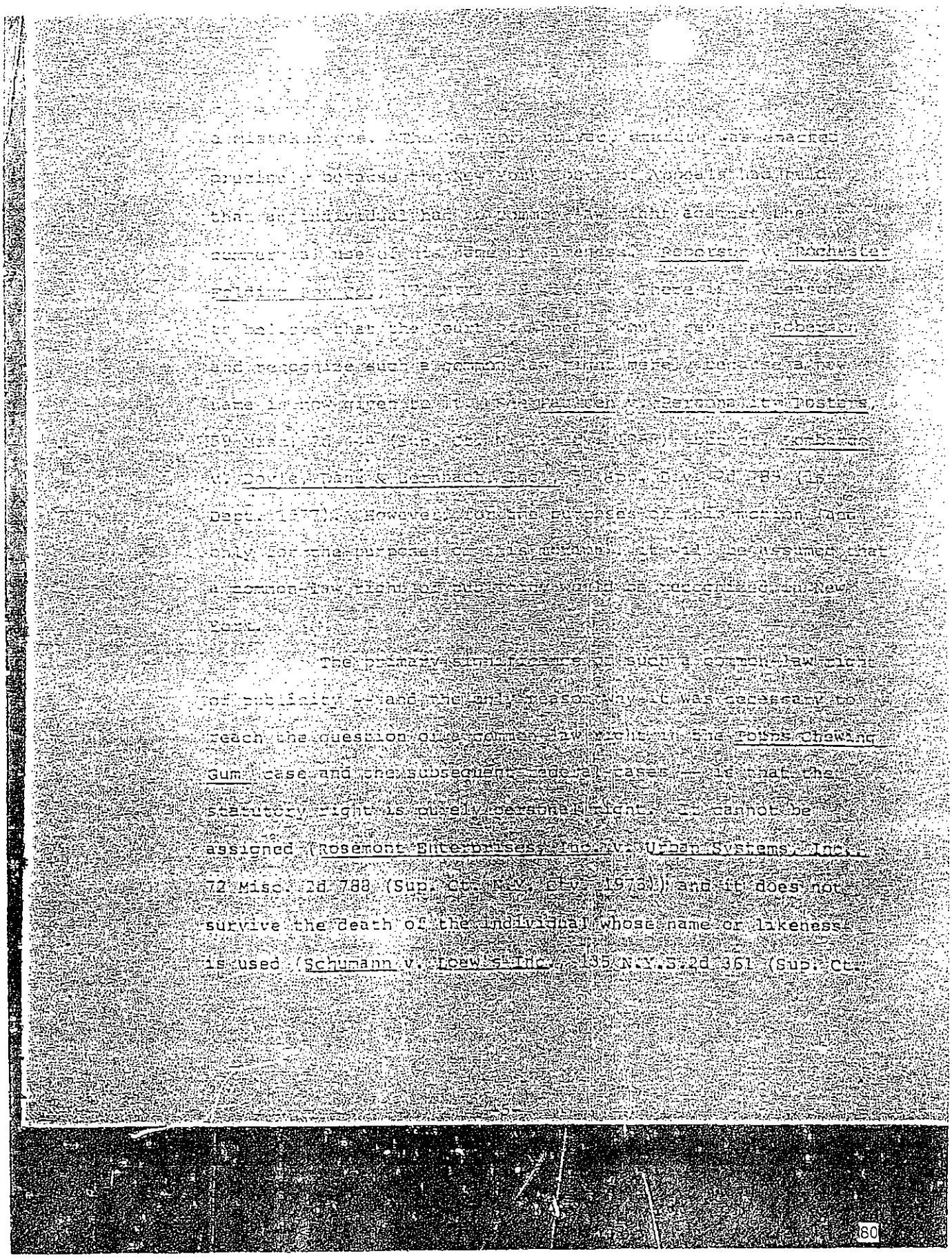
"appropriation," consists of another's use of an individual's name or likeness for advertising or other commercial purposes. Id. at 804.

"Appropriation" thus differs fundamentally from the other privacy torts in that it is not primarily concerned with plaintiff's feelings -- or, indeed, with his "privacy" in



Haelan Laboratories, Inc. v. Topps Chewing Gum, Inc., 202 F.2d 866 (2d Cir.), cert. denied, 346 U.S. 816 (1953), and has been followed in subsequent federal court decisions.

The conclusion in these federal decisions that there is a common-law right of publicity in New York is, we believe,



assigned (Rosemont Enterprises, Inc. v. Urban Systems, Inc.,

72 Misc. 2d 788 (Sup. Ct. N.Y. Cty. 1973)) and it does not

survive the death of the individual whose name or likeness

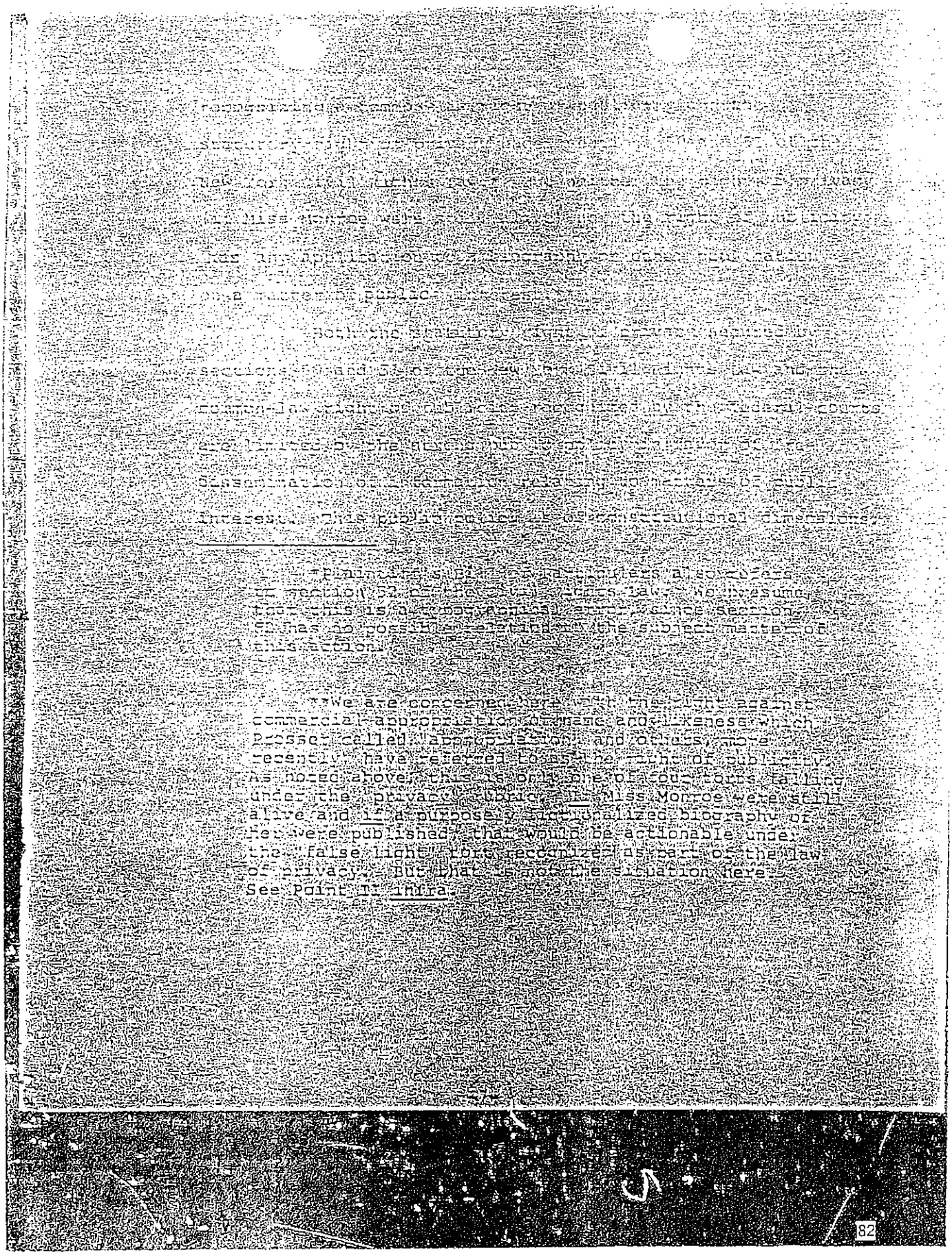
is used (Schumann v. Loew's Inc., 135 N.Y.S.2d 361 (Sup. Ct.

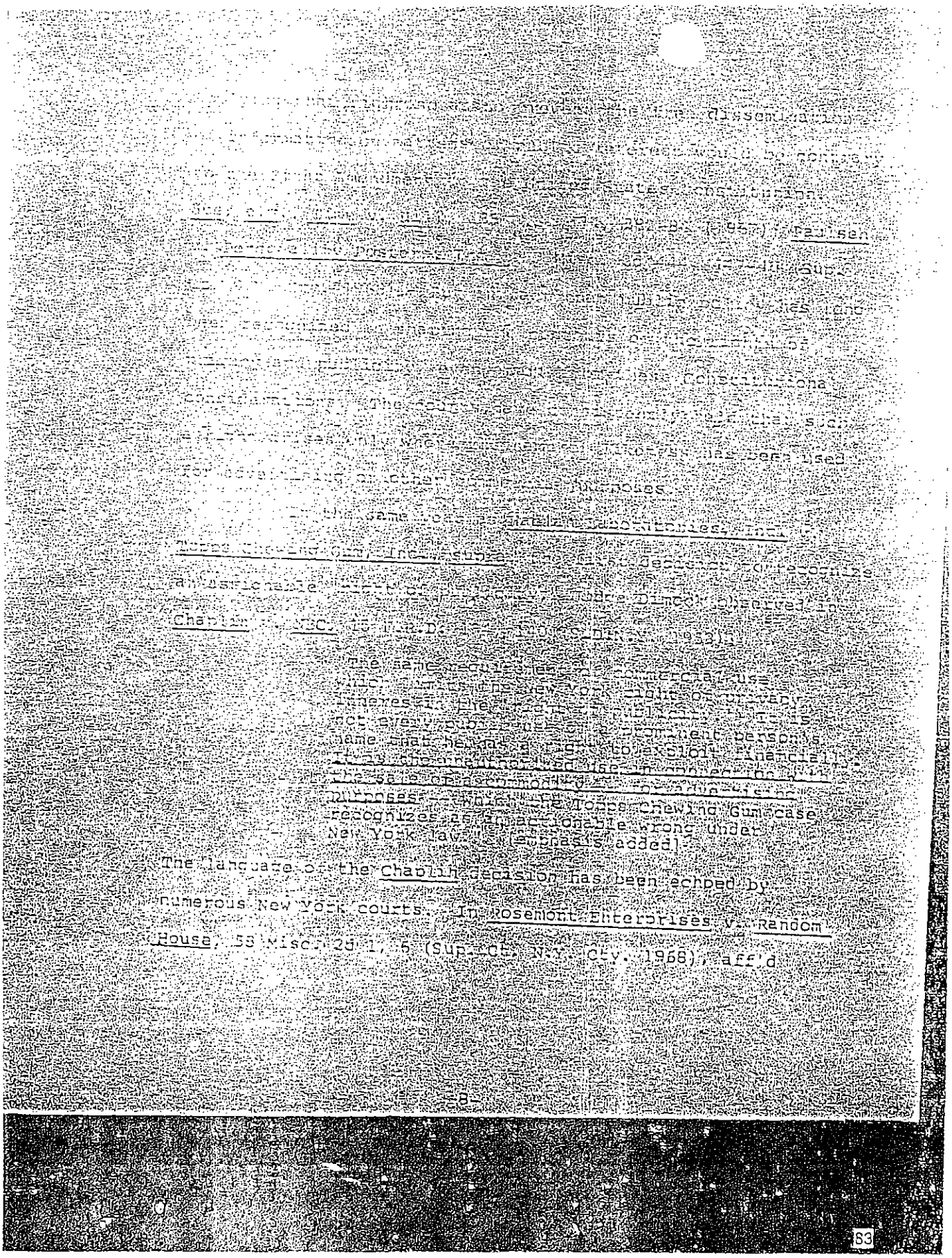
[illegible] The supposed [illegible] right of publicity, recognized in the federal cases, [illegible] and may be [illegible] at least in certain circumstances. See Factors Etc., Inc. v. Pro Arts, Inc., [illegible] Cir. 197[illegible]); Price v. Hal Roach Studios, Inc., [illegible] (S.D.N.Y. 1975).

But even if such a common-law right of publicity exists in New York and is descendible, it cannot and does not preclude the publication of a biography such as the book involved in this case. As will be demonstrated in detail below, this principle is well established and fully disposes of plaintiff's claim.

<u>POINT I[illegible] THE RIGHT OF PUBLICITY IS INAPPLICABLE TO BIOGRAPHIES AND OTHER PUBLICATIONS OF PUBLIC INTEREST.</u>

Paragraph 6 of the Complaint describes the right allegedly infringed as merely the "right of publicity." (A copy of the Complaint is Exhibit A to the Curtis moving affidavit.) It contains no reference to any infringement of the statutory right of privacy. This is understandable since, as noted above, any such right of privacy was personal to Marilyn Monroe and terminated upon her death. By contrast, Response No. 4 in plaintiff's Bill of Particulars (Exhibit C to the Curtis affidavit) refers to both the federal cases





New York law. (emphasis added).

The language of the Chaplin decision has been echoed by numerous New York courts. In Rosemont Enterprises v. Random House, 58 Misc. 2d 1, 5 (Sup. Ct. N.Y. Cty. 1968), aff'd

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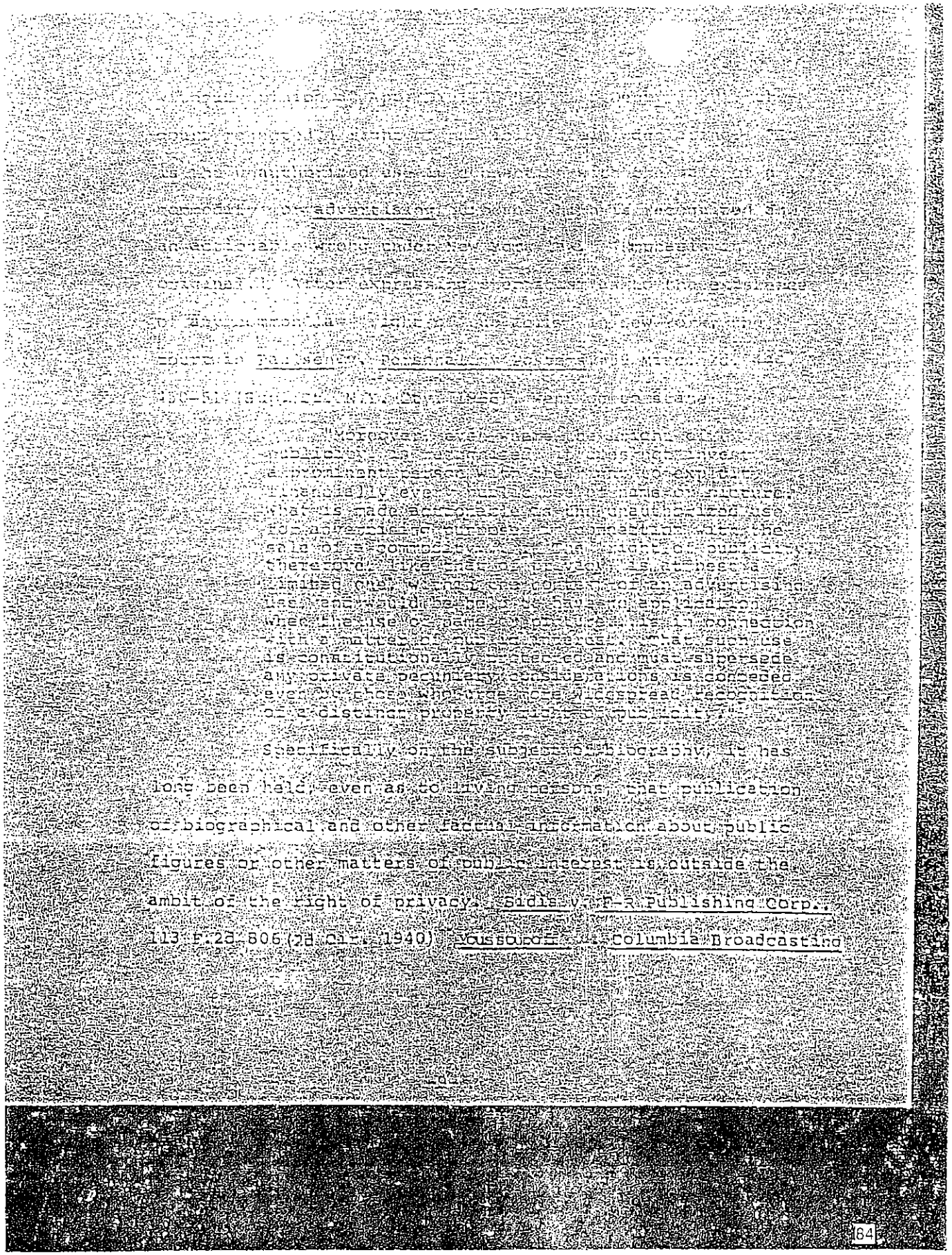

Specifically on the subject of biography, it has long been held, even as to living persons, that publication of biographical and other factual information about public figures or other matters of public interest is outside the ambit of the right of privacy. Sidis v. F-R Publishing Corp., 113 F.2d 806 (2d Cir. 1940); Youssoupoff v. Columbia Broadcasting

[illegible] Rosemont [illegible] [illegible] [illegible] [illegible] 58 Misc. 2d 1, 294 N.Y.S.2d 122 (Sup. Ct. N.Y. Co. 1968), aff'd [illegible] [illegible] [illegible] common-law right of [illegible] publicity. [illegible] Rosemont Enterprises, Inc. v. Random House, a [illegible] [illegible] [illegible] [illegible] without [illegible] [illegible] [illegible] [illegible] Howard Hughes' name, likeness and personal [illegible] [illegible] the publication of an unauthorized biography on the grounds that [illegible] violated Hughes' statutory right of privacy and his "right of publicity." The court dismissed the complaint in its entirety:

> The publication of a biography [illegible] outside the ambit of the "commercial use" contemplated by the "right of publicity" and such right can have no application to the publication of factual material which is constitutionally protected. Just as a public figure's "right of privacy" must yield to the public interest so too must the "right of publicity" bow where such conflicts with the free dissemination of thoughts, ideas, newsworthy events, and matters of public interest. Because of such considerations, a public figure can have no exclusive rights to his own life story, and others need no consent or permission of the subject to write a biography of a celebrity. Id. at [illegible] (emphasis added).

Plaintiff is not unaware, of course, of the weight of law against him and seeks to evade its application by what can only be described as an exercise in semantics. The book Marilyn, according to the Complaint (¶¶ 8-9), is not a book at

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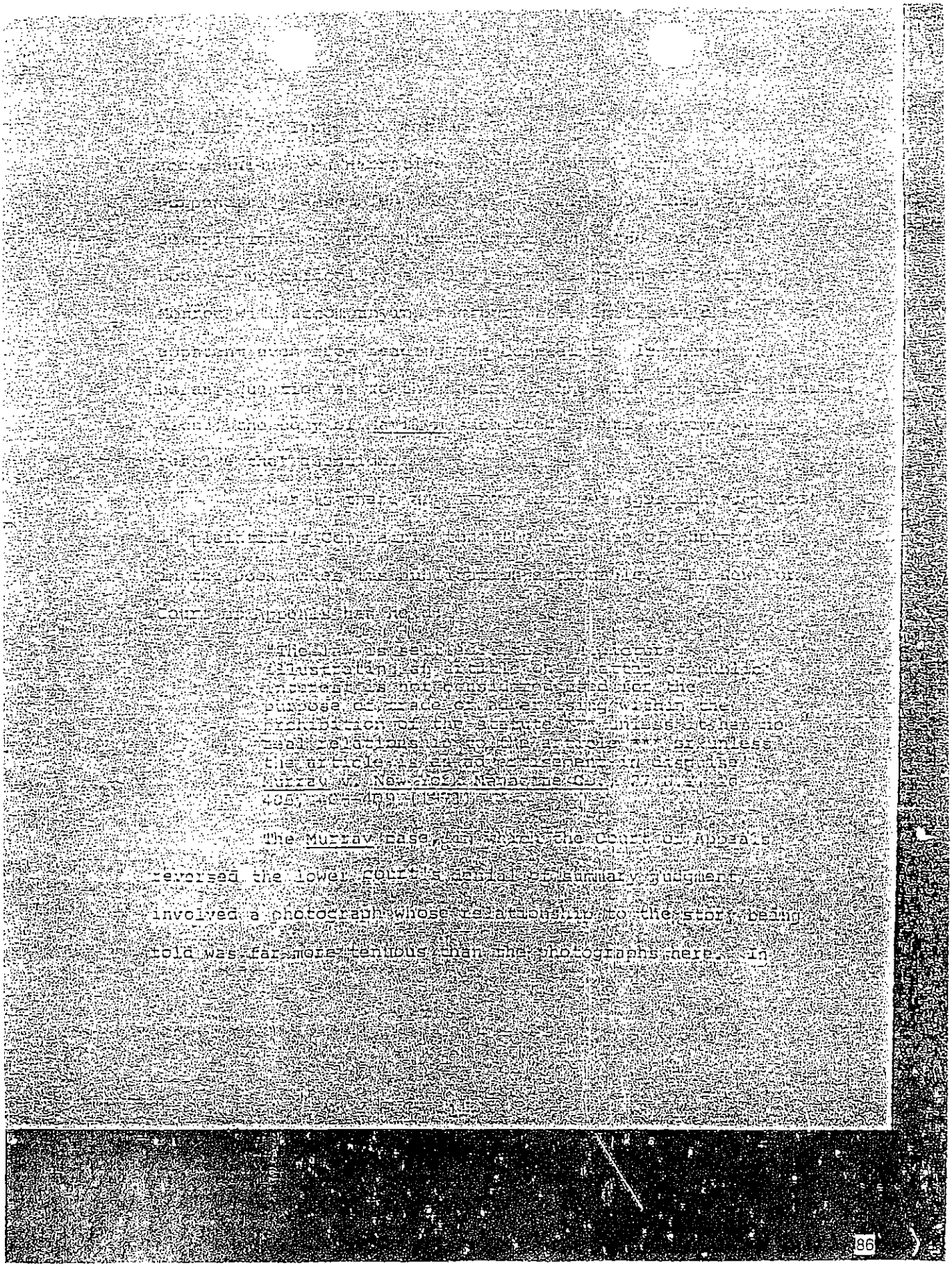

The Murray case, from which the Court of Appeals reversed the lower court's denial of summary judgment, involved a photograph whose relationship to the story being told was far more tenuous than the photographs here. In